

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRACY CLARE MICKS-HARM,

Lead Case No. 18-12634

Hon. Denise Page Hood
Magistrate R. Steven Whalen

Plaintiff,

vs.

WILLIAM PAUL NICHOLS ET AL.,

Defendants.

Consolidated with Case Nos. 18-
13206, 18-13639, 18-13647, 19-10125,
19-10126, 19-10132, 19- 10135,
19-10299

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DEFENDANT IPATIENTCARE INC.'S MOTION TO DISMISS

NOW COMES Defendant, IPATIENTCARE INC. ("IPC"), by and through its legal counsel, Robert S. Iwrey Esq. and James R. Witham Esq., of THE HEALTH LAW PARTNERS, P.C., and states as follows:

1. This Motion is brought pursuant to Fed. R. Civ. P. 12(b)(6) or in the alternative, pursuant to Fed. R. Civ. P 12(d).
2. Plaintiffs, Tracy Clare Micks-Harm, Debra Nichols, Ines Helm, Dennis Helm, Renay Blakesley, Raymond Blakesley, Eric Cook, and Eric Cook (on behalf of

Jacob Cook) have filed lawsuits against IPC that have been removed from Monroe County Circuit Court into federal court.

3. On February 15, 2019, this Court determined that the above-mentioned Plaintiffs and their cases would be consolidated under Micks-Harm v. Nichols et al., case number 2:18-cv-12634-DPH-RSW.¹

4. IPC moves to dismiss all cases consolidated under Micks-Harm v. Nichols et al., case number 2:18-cv-12634-DPH-RSW.

5. Plaintiffs make various deficiently pled claims against IPC in which they allege violations of HIPAA, the Computer Fraud and Abuse Act, the Klu Klux Klan Act of 1870 and 1871, the Fourth Amendment and various undefined constitutional rights.

¹ Subsequently, on February 20, 2019, this Court entered an Order to consolidate the above-mentioned cases and any other new and related cases filed and reassigned to the Court (ECF No. 27) and specifically cited:

- 1) Nichols v. Nichols et al, 18-cv-13206 (Hood, J.) (removed on October 15, 2018);
- 2) Helm v. Arnold et al, 18-cv-13639 (Hood, J.) (removed on November 21, 2018);
- 3) Helm v. Nichols et al, 18-cv-13647 (Hood, J.) (removed on November 21, 2018);
- 4) Cook v. William et al, 19-cv-10125 (Hood, J.) (removed on January 14, 2019);
- 5) Cook v. Nichols et al, 19-cv-10126 (Hood, J.) (removed on January 14, 2019);
- 6) Cook v. Nicols et al, 19-cv-10132 (Hood, J.) (removed on January 14, 2019);
- 7) Cook v. Nichols et al, 19-cv-10135 (Hood, J.) (removed on January 14, 2019); and
- 8) Blakesley v. Nichols et al, 19-cv-10299 (Hood, J.) (removed on January 30, 2019)

for consolidation.

6. In summary, Plaintiffs appears to be alleging that IPC is responsible for the above-mentioned violations because of a search and seizure of their medical records through various governmental entities.

7. For the reasons stated in the accompanying Brief in support of this Motion, IPC hereby moves for dismissal of Plaintiffs' claims against it for the following reasons:

- (a) HIPAA provides no private cause of action;
- (b) HIPAA expressly authorizes the use of protected health information for law enforcement activities and fraud waste and abuse investigations;
- (c) Plaintiff has not sufficiently pled and does not have a viable claim under the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030;
- (d) the Fourth Amendment and any other constitutional-related claims fail as pled against IPC since such claims can only be brought against a state actor;
- (e) any conspiracy claims fail together with their underlying claims;
- (f) the Complaint is deficient of facts and causation pertaining to IPC, thereby failing to reasonably inform IPC of the nature of Plaintiff's claims and falls short of applicable pleading requirements.

WHEREFORE, IPC respectfully requests that this Honorable Court grant its Motion to Dismiss and dismiss Plaintiffs' claims against it with prejudice and tax attorney's fees and costs as applicable.

Dated: February 22, 2019

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**Brief in Support of
Motion to Dismiss**

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**BRIEF IN SUPPORT OF DEFENDANT IPATIENTCARE INC.'S MOTION
TO DISMISS**

CONCISE STATEMENT OF ISSUES PRESENTED

- I. Whether Plaintiffs' complaints should be dismissed because they fail to plead a claim under applicable pleading standards.
- II. Whether Plaintiffs have a private cause of action under HIPPA.
- III. Whether Plaintiffs' CFAA Claims are adequately pled with a viable cause of action.
- IV. Whether Plaintiffs' constitutional-related claims against iPatientCare Inc. ("IPC") are viable causes of action.
- V. Whether Plaintiffs' Conspiracy-Related Claims Fail without the support of viable underlying claims.
- VI. Whether amendment of Plaintiffs' claims will be futile.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

I. Whether Plaintiffs' complaints should be dismissed because they fail to plead a claim under applicable pleading standards. Fed.R.Civ.P. 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662; 129 S.Ct. 1937; 173 L.Ed.2d 868 (2009), *Bell Atlantic Corp v. Twombly*, 550 U.S. 544; 127 S.Ct. 1955; 167 L.Ed.2d 929 (2007); Fed. R. Civ. P. 8(a); MCR 2.111.

II. Whether Plaintiffs have a private cause of action under HIPPA. Fed. R. Civ. P. 12(b)(6) *Thomas v. Univ. of Tenn. Health Sci. Ctr. at Memphis*, No. 17-5708, 2017 WL 9672523, at *2 (6th Cir. Dec. 6, 2017); 45 C.F.R. § 164.512(f).

III. Whether Plaintiffs' CFAA Claims are adequately pled with a viable cause of action. Fed. R. Civ. P. 8(a); 18 U.S.C. § 1030(g).

IV. Whether Plaintiffs' constitutional-related claims against IPC are viable causes of action. *Gottfried v Med Planning Servs*, 280 F3d 684 (6th Cir, 2002).

V. Whether Plaintiffs' Conspiracy-Related Claims Fail without the support of viable underlying claims. *Urbain v. Beierling*, 301 Mich. App. 114, 132, 835 N.W.2d 455, 464 (2013).

VI. Whether amendment of Plaintiffs' claims will be futile. FRCP 15(a)(2); *Beydoun v. Sessions*, 871 F.3ed 459, 469 (6th Cir. 2017).

ADOPTION OF PREVIOUSLY FILED MOTIONS TO DISMISS

Before this Court's consolidation of cases into the Micks-Harm case, IPC filed three separate Motions to Dismiss in cases similar to this one:

ECF 14, 2:18-cv-13647 (I. Helm) (Exhibit A);

ECF 14, 2:18-cv-13639 (D. Helm) (Exhibit B); and

ECF 36, 2:18-cv-13206 (D. Nichols) (Exhibit C).

In order to reduce duplicative pleading and arguments, IPC adopts and incorporates these motions and their briefings to this case. Furthermore, IPC requests the Court to consider the facts, arguments, evidence, and relief requested in these motions for dismissal of all claims against it by all current Plaintiffs in this case and by any future Plaintiffs who file similar claims in this case. A true and accurate copy of the above-mentioned motions is attached as Exhibits A-C, respectively.

ADOPTION OF MOTIONS TO DISMISS FILED BY OTHER DEFENDANTS

To the extent applicable and not inconsistent with any argument set forth above, IPC adopts and incorporates by reference all arguments raised by motions to dismiss filed by other Defendants in this case and any of the cases that were consolidated in this case.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, IPC respectfully requests that this Court grant IPC's Motion to Dismiss, dismiss (current and future related) Plaintiffs' claims against IPC with prejudice, and award costs and fees incurred by IPC as a result of this frivolous action.

Dated: February 22, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February 2019, Defendant iPatientCare Inc.'s Motion (and Brief in Support of Motion) to Dismiss was filed with the Clerk of the Court through the ECF system which will give notice to all parties of record. In addition, I further certify that the following entities/individuals were served via U.S. mail, certified return receipt, postage prepaid:

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4852-3442-0104, v. 3